

AP/3637

TRANSMITTAL OF APPEAL BRIEF (Large Entity)

Docket No.
TPP/31370

In Re Application Of: Volker KETTLER et al

Serial No.
09/821,802

Filing Date
March 30, 2001

Examiner
P. Tran

Group Art Unit
3637

Invention:

PARQUET BOARD

TO THE COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on

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Dated: January 29, 2004

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

In re the Application of

Volker KETTLER et al.

Group Art Unit: 3637

Serial No.: 09/821,802

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For: PARQUET BOARD

APPEAL BRIEF

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I. Real Party in Interest

The real party in interest is the assignee of the inventors, Witex AG, a company of Germany, having a principal address of Nord-West-Ring 21, 32832, Augustdorf, Germany.

II. Related Appeals and Interferences

There are no related appeals or interferences known to Appellants, Appellants' legal representative or the assignee, which will directly affect, or be directly affected by, or have a bearing on, the Board's decision in the pending appeal.

III. Status of Claims

This is an appeal from the Final Rejection of claims 2-6 and 10-14. Claims 1 and 7-9 have been cancelled.

IV. Status of Amendments

A single Amendment After Final Rejection (amending claims 5 and 13) was filed September 22, 2003 and was entered by the Examiner as noted by the Advisory Action (Paper No. 15) mailed October 15, 2003.

V. Summary of Invention

The invention, as embodied in the claims on appeal, is directed to boards, preferably flooring boards, such as parquet, with specially designed edges. (Specification, page 1, first and second paragraphs).

Many types of conventional parquet boards are designed to be assembled with the aid of glue, which can create a variety of problems during installation. For example, a considerable amount of extra time and work is required, because the glue of the conventional boards needs to be applied before the boards can be joined. The use of glue additionally prevents the disassembly of the boards. (Specification, page 1, second paragraph).

Thus, the present invention is directed to a modification of the conventional type of boards, such that glue is no longer required. Specifically, locking elements are provided which, when the boards are installed, inseparably lock the panels together. (Specification, page 1, third and fourth paragraphs).

The boards of this invention are provided with particularly designed tongues/grooves to permit this installation. The top portion of the board, including a decorative upper surface, is provided atop a core material with profiled edges, forming the locking means. (Specification, page 5, first to third full paragraphs).

The locking means on the edges are modified tongues/grooves. A first board 12 includes a projecting tongue 14, designed to engage a groove 16 on a second board 10. An upwardly projecting locking lip 24 running in a longitudinal direction on the upper edge of the tongue 14 is designed to engage a complimentary, longitudinally running locking recess 26 on the bottom edge of a top groove cheek 28 of the groove 16. (Specification, page 2, last paragraph to page 3, third full paragraph; Figs. 1 and 2).

Due to the placement of the locking lip 24 and the recess 26, the boards are assembled by rotating one board with respect to the other. Specifically, in order to fully insert the tongue 14 into the groove 16, the second board 10 is relatively rotated from a plane defined by the first board 12, such that the upper surfaces of the boards form an obtuse angle (i.e., greater than 90°, while the lower surfaces form an acute angle. Such a relative rotation may be accomplished by displacing the second board 10 (that is the distal end thereof) downwards while maintaining contact of the locking means. This relative rotation allows the passage of the locking lip 24 into the groove 16. Once the boards are fully assembled, including fully seating the locking lip 24 in the locking recess 26, the top surfaces of the boards join up jointly, i.e., with no gap therebetween (Specification, page 4, fourth paragraph).

IV. Issues

A first issue is whether the Examiner committed reversible error in asserting that the term “said top end” renders claim 13 indefinite under 35 USC § 112.

A second is whether the Examiner erred in finally rejecting claims 2, 3, 5, 6, 10 and 11 under 35 USC § 102(b) as being anticipated by Moriau et al. (U.S. Patent No. 6,006,486).

A further issue is whether the Examiner committed reversible error in finally rejecting claims 4, 12, 13 and 14 under 35 USC § 103(a) as being unpatentable over Moriau et al. In view of Roy et al. (U.S. Patent No. 6,216,409).

A final issue is whether the Examiner erred in finally rejecting claims 4, 13 and 14 under 35 USC § 103(a) as being unpatentable over Tsai (U.S. Patent No. 5,274,979) in view of Moriau et al.

VI Grouping of Claims

The claims do not stand or fall together, but are separately patentable for the reasons set forth in the accompanying paragraphs.

VIII. Arguments

A. 35 USC § 112

Claim 13 apparently stands rejected under 35 USC § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim that which is considered the invention. Although Appellant requested consideration of the arguments presented in both the Amendment and Amendment After Final, no substantive comments were given.

The Examiner asserts that the term “said top end” in lines 2-3 of claim 13 lacks sufficient antecedent basis. However, the term “said top end” is not present in lines 2-3 or anywhere else in this claim. In fact, the element “a top end” is presented in claim 14, and is provided with sufficient antecedent basis therein. It appears that this rejection was simply copied over from Paragraph 2 the Office Action of December 11, 2002, with only the particular claim being changed.

Additionally, the Examiner states that lines 1-2 of claim 13 are confusing, and suggests that the language be changed from “the groove ... of the adjacent ... groove” be changed to “the lip ... of the adjacent ... groove”. Appellant submitted that lines 1-2 of claim 13 do not contain the allegedly offending terminology. If the Office Action is referring to lines 1-2 of the final

section of claim 13, i.e., beginning with the “wherein” clause, Appellant urges that the language of the claim is clear. As described therein, the groove of the adjacent panel has the same shape as the groove of the parquet board. Appellant did not claim, nor did the Examiner explain, how the lip of the adjacent board can have the same shape as the groove of the parquet board. At best, the lip can be the inverse of the shape of the groove of the parquet board.

B. 35 USC § 102

1. Independent Claim 13 and Dependent Claims 2, 3, 5, 6, 11

Independent claim 13 apparently stands rejected (along with claims 2, 3, 5, 6, 10 and 11 depending therefrom) under 35 USC § 102(b), as allegedly being anticipated by Moriau et al. The Examiner has asserted that each feature of claim 13 is expressly (not inherently) taught by this reference.

In rejecting this claim in the Office Action of December 11, 2002 (Paper No. 11) (hereinafter “first Office Action”), the Examiner pointed to various features of Moriau et al. as being equivalent to the presently recited features. In order to make the argument that the features of the references are, in fact, equivalent to the features recited by the claim, the Examiner was forced to “flip” the panel of the reference. (See page 3, last paragraph, wherein the Examiner states, “face 7 being the top surface,” when in fact, element number 7 is identified as an “underside.”)

In so doing, the Office Action equated the top (or upper surface) of the panels of the present invention to the underside 7 of the reference. As the present claims recite, not only specific structures, e.g., “decorative surface”, “core” (claim 13), but also specific orientations other than structures, e.g., “upper decorative surface atop a core” (claim 13), in order for a reference to anticipate such claims, the reference must disclose each feature of the claim, including the positively recited orientations. See MPEP § 2131 and In re Bond 15 USPQ2d 1566 (Fed. Cir. 1990). Thus, as Moriau et al. fails to teach each feature of the present claims, it is clear that claim 13 can never be expressly nor inherently anticipated by Moriau et al.

In responding to the Office Action with the Amendment of March 11, 2003 (hereinafter "Amendment I"), Appellant additionally amended claim 13 to clarify the upper surface of the panel and the orientations of the various components.

Additionally, Appellant argued that it would not have been obvious to invert the floor panels 1 of Moriau et al., such that underside 7 became the upper surface. Appellants directed the Examiner's attention to Col. 8, line 65 through Col. 9, line 15. Therein, the upper and lower surfaces of the panels are discussed. As is generally known in the flooring art (and recited by the present claims) modern floor coverings, such as laminated floors and parquet, often include a decorative upper surface and a lower structure, often known as the core. See Fig. 8 of Moriau et al., wherein the upper decorative surface is formed with a decorative layer 55 (paper impregnated with resin, which can be printed with a decorative pattern) and a protective top layer 56, and optionally an intermediate layer 57. Thus, the upper surface is particularly designed to provide a surface, which, when joined to another surface panel, provides a "jointless" upper surface (claim 13, second line) (i.e., a surface with no gap therebetween; see last paragraph under Summary of the Invention", supra.), and to invert the floor panel would defeat the purpose of such layers. Moreover, if the floor panel of the reference were inverted, a gap would be produced on the visible or exposed surface between the panels. See Fig. 7. Such a gap, hole or space between the lower lip 43 of one panel and the core 8 of a second panel would negate the claimed requirement for a "decorative" upper surface "jointlessly" laid because the hole or gap is unsightly and further would provide a location between the panels, allowing dirt and other particulate matter to enter and collect, as well as allow for water and other liquids to enter through the gap and permeate the core to warp or otherwise damage the panel. This relationship is eliminated by the recitation of claim 13.

Furthermore, as amended, claim 13 recites a "decorative upper surface atop a core". While the panel of the reference also includes a core, by inverting the panel of the reference (as was suggested by the Office Action), the "upper surface" would actually become the lower surface with a gap at the joint of the panels.

This reference additionally fails to provide any motivation to direct one of ordinary skill to utilize the floor panels completely "flipped over."

Additionally, Appellant argued that the upper and the lower surface of laminate flooring, such as described by the reference, are not exchangeable. While the upper surface is used for walking, the lower surface or underside has only a counter balancing effect for the top layer (see column 9, lines 10 to 15 of Moriau et al. See also column 8, line 65 to column 9, line 6 of Moriau et al.). Thus, Appellant presented that Moriau et al. must be considered the other way round.

As a result, the following features of claim 13 are missing from Fig. 5 to 7 of the reference.

1. *wherein the top edge of the tongue is provided with a projecting locking lip running in the longitudinal direction of the tongue,*

In contrast, Moriau et al. shows a comparable locking lip on the lower edge of the tongue.

2.. *said recess is formed in a lower portion of the top groove cheek;*

In contrast, Moriau et al. discloses a recess in the upper portion of the lower groove cheek.

3. *the bottom groove cheek being shorter than the top groove cheek.*

According to Moriau et al. the upper groove cheek (not lower groove cheek) is shorter.

4. *a gradation is provided on the bottom groove cheek which widens only a portion of the groove and a tapered surface is provided between said widened portion of the groove and the remainder of the groove*

This feature defines the stepped character of the lower groove cheek. Nothing of this kind is shown in the cited reference.

5. *the tongue is provided in its root portion with a section of greater thickness than the remainder of the tongue forming a thicker tongue portion, the thickness of the remaining portion of the tongue being connected to said thicker tongue portion via a linear tapered surface*

The Office Action refers to elements 40 and 38 of Moriau et al. which however designate the locking lip rather than the stepped form of the tongue.

6. *during assembly of the parquet board with the adjacent parquet board the thicker portion of the tongue is not yet engaged in the graduated portion of the groove so that the parquet board having the tongue can be displaced slightly downwards to facilitate the passage of the locking lip into the groove and the upper surface of a parquet board can be laid jointlessly with an upper surface of an adjacent parquet board.*

Since Moriau et al. discloses a parquet board having a longer lower lip, this kind of connecting between two parquet boards is not possible.

However, in the Office Action of July 1, 2003 (hereinafter "Final Office Action"), the Examiner failed to comment on either the amendment to claim 13 (or any other claim) or the arguments for patentability and copied the rejection from the first Office Action with only very minor changes thereto. Although Appellant requested substantive comment regarding this rejection in the Amendment After Final (September 22, 2003), the Examiner refused to elaborate, simply stating, "the claims are still rejectable by the references as claimed" (Advisory Action, Item 7).

As a result, it is not clear whether the Examiner has fully comprehended the present application, prior art and the amendments and actually has not developed any argument as to why the claims are anticipated by Moriau et al. Based upon the rather scant comments regarding the amended claims, Appellant cannot be sure if the Examiner has understood and addressed Appellant's amendments and arguments as he has not provided a rebuttal thereof.

Moreover, because the Advisory Action only states the claims are still "rejectable," the Advisory Action does not explain if any of the rejections have been overcome. Thus, Appellant is unsure if all rejections have been maintained.

2. Dependent Claim 10

Claim 10 stands finally rejected for the same reasons discussed above. While the first Office Action and the final Office Action do not separately discuss this claim, Moriau et al., nevertheless, fails to teach or suggest the feature added by this claim:

wherein when the board is in an assembled position with at least one adjacent parquet board, there is at least a small gap between the tapered surfaces on the groove and on the tongue

None of the Figs. of Moriau et al. show a gap between the structures alleged to be the tapered surfaces of the grooves and the tapered surface of the tongue. The first Office Action refers to the provided annotated copies of the Figs. of Moriau et al. and identifies TP and TP2 (See Appendix A, Exhibit 2) as being the recited gap. However, claim 10 describes the gap as being defined by the tapered surfaces on groove and on the tongue. In contrast, TP and TP2, at best, are defined by only one of the recited tapered surfaces.

C. 35 USC § 103

The rejections under § 103 presented in the final Office Action were also simply copied over from the prior Office Action with minor changes thereto. Again, although Appellant made amendments and presented arguments to overcome the rejections, the final Office Action commented on neither. Although Appellant requested substantive comment regarding this rejection in the Amendment After Final (September 22, 2003), the Examiner refused to elaborate, simply stating, “the claims are still rejectable by references as claimed” (Advisory Action, Item 7).

Again, because the Advisory Action only states the claims are still “rejectable,” the Advisory Action does not explain if any of the rejections have been overcome. Thus, Appellant is unsure if these rejections have been maintained.

1. Independent Claim 13 and Dependent Claim 12

Claims 12 and 13 apparently stand rejected under 35 USC § 103(a) as allegedly being unpatentable over Moriau et al. in view of Roy et al. (U.S. Patent No. 6,216,409). The Office

Action asserts that Moriau et al. teaches each feature of these claims, “except for the end of the tongue on a bottom side have a tapered surface,” for which purpose Roy et al. is cited.

Appellant traverses the alleged teachings of Moriau et al. See Section VIII.B above, incorporated by reference.

Moreover, Appellant respectfully submits that first section 12 of tongue 4 of Roy et al. is not a tapered surface as presently claimed. Specifically, section 12 is described as a circular or “substantially circular” (claim 1 and Col. 4, line 67), and section 16 is described as rolling across section 12. Thus, Roy et al. neither teaches nor suggests “a linear tapered surface” at the transition between the narrower and thicker sections, as recited by the present claims.

In any event, as Roy et al. fails to suggest to invert the floor panel of Moriau et al., the secondary reference fails to cure the deficiencies of Moriau et al. alone (as discussed in Section VIII.B above). Thus, Appellant urges that claims 12 and 13 cannot be obvious in view of the teachings of Moriau et al. and Roy et al.

2. Independent Claim 13 and Dependent Claims 4 and 14

Claims 4, 13 and 14 apparently stand rejected under 35 USC § 103(a) as allegedly being unpatentable over Tsai (U.S. Patent No. 5,274,979) in view of Moriau et al. The Office Actions assert that Tsai teaches each feature of the rejected claims except for “a gradation being provided on the bottom groove cheek, which widens only a portion of the groove and a tapered surface being provided between the widened portion of the groove and the remainder of the groove,” for which purpose Moriau et al. is cited.

Initially, although the Examiner attempts to identify various features recited by the rejected claims, the Examiner is incorrect in at least the following parts:

1. *parquet board*: This reference does not discuss parquet boards. Although the insulating plates of the reference may be used to form a floor, such insulating panels are not parquet as is known in the art. Furthermore, modifying the insulating plate of Tsai would not have been obvious because, as stated in the present specification, such complicated edge profiles are difficult, if even possible to machine, and the Examiner has not provided a reason why one would do so in a low quality product, such as insulating boards.

2. *decorative upper surface*: The Examiner points to element 24b as a decorative upper surface. While outwardly facing surface 24b may be an upper surface, there is no teaching nor suggestion to modify the upper surface to provide it with a decor.

3. *the thickness in the remaining portion of the tongue being connected to the thicker tongue portion via a linear tapered surface*: The Examiner points to the tapered surface provided by the ridge 19 of Tsai. However, as shown in the cross-section views (Figs. 2 and 4), ridge 19 contains no linear tapered surface. In fact, ridge 19 is defined on one side by an upright member and on the opposite side, by a rounded surface.

In any event, it is clear the Examiner has misconstrued the language of this feature. This feature actually refers to the bridge between the “section of greater thickness” and “the remaining portion of the tongue,” not between the tongue and another element of the joint. Accordingly, neither Tsai nor Moriau et al. show such a feature. In fact, assuming, as the Examiner has alleged, that first wing 14 of Tsai includes a distal section having a smaller thickness, the bridge to the thicker section is sharp, i.e., not tapered.

The Examiner admits Tsai does not show a gradation on the bottom groove cheek, the gradation which widens a portion of the groove. However, Moriau et al. also fails to show such a feature. While Moriau et al. includes a gradation on the upper surface of the lower cheek, such gradation is not provided within the groove, and as such does not widen a section of the groove.

Even if the structure of Moriau et al. includes a gradation (apparently identified at G in Appendix B of the first Office Action, and attached as Exhibit 2 of Appendix A) in the bottom groove cheek, the structure of Tsai is lacking other presently recited elements. For example, the present claims describe a linear tapered surface connecting the narrower (distal) portion to the wider (root or proximal) portion of the tongue. In contrast, the distal portion of the first wing 14 of Tsai is provided with a vertical section connecting the narrower distal end to the wider proximal end, not a linear tapered surface. The lip 19 to which the Examiner refers in the Office Action is a protrusion, and not the transition to the thicker portion of the tongue. In fact, its function and position are completely unrelated to the transition, being as the Examiner recognizes, a “projection lip or ridge” (see column 2, line 54). Thus, the asserted combination is lacking elements recited by claims 4, 13 and 14.

a. Dependent Claim 4

The combination of Tsai et al. and Moriau et al. additionally fails to teach or suggest an additional feature recited by claim 4:

wherein ... the boards come into contact with each other so as to form a useful top surface. The Examiner merely mentions that Fig. 4 of Tsai shows the boards in contact with another. However, what Fig. 4 does show is an extension 122 used to bridge the gap between the two insulating panels. Thus, the panels themselves do not come in contact with each other, as the additional extension 122 is required.

IX. Conclusion

As the Examiner has failed to identify in the cited art each feature recited by the present claims, or in the alternative, establish why one of ordinary skill in the art would be motivated to modify the prior art, Appellant urges the Examiner committed reversible error in finally rejecting the claims of this application as being anticipated and/or unpatentable over the cited art. Furthermore, as the indefiniteness rejection is unfounded, Appellant additionally urges that the Examiner erred in asserting that the term "said top end" renders claim 13 indefinite.

APPENDICES

The following Appendices are attached to and made part of this brief:

Appendix A	Exhibit 1	Claims on Appeal
	Exhibit 2	Appendix B from first Office Action

Respectfully submitted,



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APPENDIX A

Exhibit 1: Claims on Appeal

1. CANCELLED
2. (Previously Presented) The parquet board of claim 13, wherein an entry edge of the top groove cheek is provided with a tapered surface.
3. (Previously Presented) The parquet board of claim 13, wherein the locking lip has an edge closest to a free end of the tongue and said edge is provided with a tapered or rounded surface.
4. (Previously Presented) The parquet board of claim 13, wherein the top cheek of the parquet board projects beyond the groove so that when assembled with an adjacent parquet board, the boards come into contact with each other so as to form a useful top surface.
5. (Previously Presented) The parquet board of claim 13, wherein the tongue is sized such that, when in an assembled position with an adjacent board the tongue does not have a length which completely fills the groove, such that there is a gap between said tongue and an end of the groove.
6. (Previously Presented) The parquet board of claim 13, wherein when the board is in an assembled position with an adjacent parquet board, there is at least a small gap between an edge of the locking lip and the corresponding edge of the locking recess.
- 7-9. CANCELLED

10. (Previously Presented) The parquet board of claim 13, wherein when the board is in an assembled position with at least one adjacent parquet board, there is at least a small gap between the tapered surfaces on the groove and on the tongue.

11. (Previously Presented) The parquet board of claim 13, wherein the parquet board is shaped as a slim, elongated rectangle, and in that the groove and tongue profile is provided on the opposite longitudinal sides.

12. (Previously Presented) The parquet board of claim 13, wherein there is a tapered surface at an outer end of the tongue, on a bottom side of the tongue.

13. (Previously Presented) A parquet board with a groove and tongue edge profile comprising an upper decorative surface atop a core, a projecting tongue on at least one edge of the parquet board and a receding groove on at least one other edge of the parquet board, wherein the top edge of the tongue is provided with a projecting locking lip running in the longitudinal direction of the tongue, and a corresponding locking recess is provided running in the longitudinal direction of the groove, the edge of the parquet board defining the groove comprising a top groove cheek and a bottom groove cheek, and said recess is formed in a lower portion of the top groove cheek, said top and said bottom groove cheeks defining an entry for the groove,

the bottom groove cheek being shorter than the top groove cheek,

a gradation is provided on the bottom groove cheek which widens only a portion of the groove and a tapered surface is provided between said widened portion of the groove and the remainder of the groove,

the tongue is provided in its root portion with a section of greater thickness than the remainder of the tongue forming a thicker tongue portion, the thickness in the remaining portion of the tongue being connected to said thicker tongue portion via a linear tapered surface,

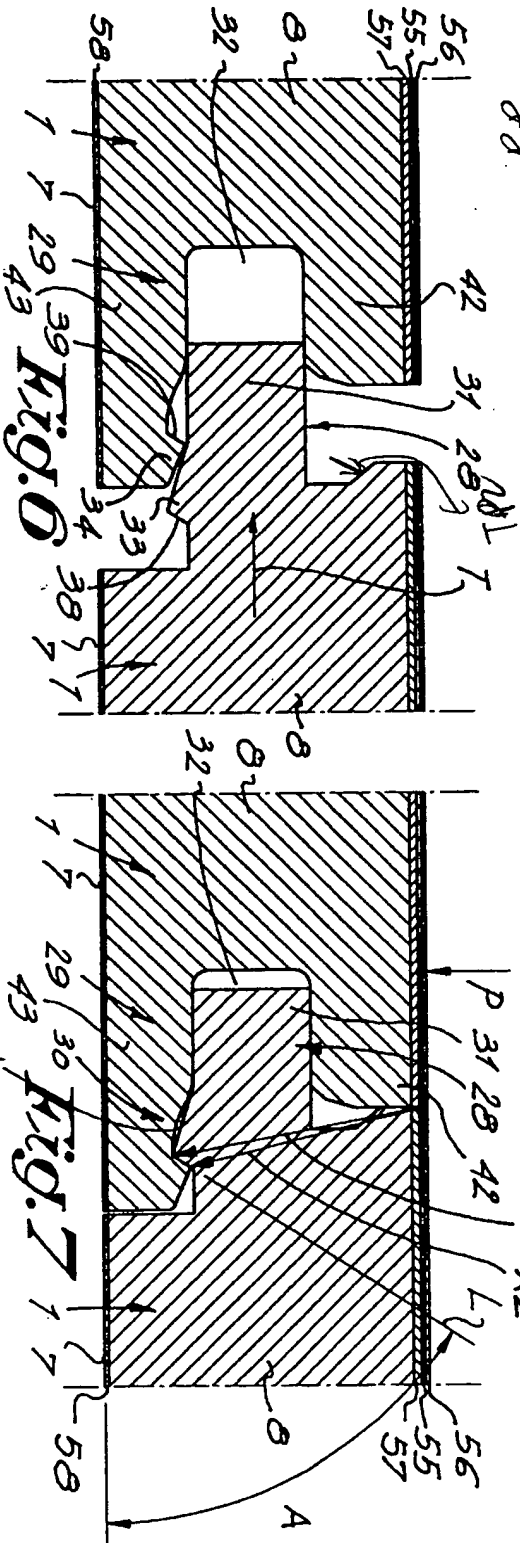
whereby when the locking lip enters a groove of an adjacent parquet board, the groove of the adjacent parquet board having the same shape as the groove of the parquet board, during assembly of the parquet board with the adjacent parquet board, the thicker portion of the tongue is not yet

engaged in the graduated portion of the groove so that the parquet board having the tongue can be displaced slightly downwards to facilitate the passage of the locking lip into the groove and the upper surface of one parquet board can be laid jointlessly with an upper surface of an adjacent parquet board.

14. (Previously Presented) The parquet board of claim 13, wherein the board further comprises a top end above the projecting tongue, wherein said top end is shaped such that, when assembled with an adjacent parquet board having a groove, said top end contacts the top cheek of said adjacent board so as to form a useful top surface.

EXHIBIT 2 - Appendix B from first Office Action

Appendix B



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